

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

In re:

MBMK PROPERTY HOLDINGS, LLC

Debtor.

Chapter 11

Bankruptcy No.: 22-13121-mdc

MBMK Property Holdings, LLC,

Plaintiff,

v.

Wilmington Trust, National Association, As  
Trustee for the Benefit of the Holders of  
CoreVest American Finance 2018-2 Trust  
Mortgage Pass-Through Certificates; Bay  
Management Group of Philadelphia, LLC;  
James Paul, d/b/a James Paul of the ALPS  
Group; and, ALPS Group, Inc. d/b/a James  
Paul The ALPS Group,

Defendants.

Adv. Pro. No.: 23-00062-mdc

**WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE BENEFIT OF THE  
HOLDERS OF COREVEST AMERICAN FINANCE 2018-2 TRUST MORTGAGE PASS-THROUGH  
CERTIFICATES, MOTION TO DISMISS COUNTS I, II, IV, AND V OF ADVERSARY COMPLAINT FOR  
FAILURE TO STATE A CLAIM**

Comes now, Wilmington Trust, National Association, as Trustee for the Benefit of the Holders of CoreVest American Finance 2018-2 Trust Mortgage Pass-Through Certificates (“Lender”), by its undersigned counsel, respectfully requests that the Court enter an order dismissing Counts I, II, IV, and V of Debtor’s Adversary Proceeding under Rule 12(b)(6) of the Federal Rules of Civil Procedure, applicable in this proceeding pursuant to Rule 7012(b) of the

Federal Rules of Bankruptcy Procedure, for failure to state a claim upon which relief may be granted.

Count II of the Complaint attempts to assert a claim against Lender for breach of contract. This claim fails to allege any action by Lender amounting to a breach of the Loan Documents. In Count II of the Complaint, Debtor alleges that Lender breached the Loan Documents by exercising its rights under the Loan Documents by declaring default against Debtor and seeking the enumerated relief thereafter. None of the actions in declaring a default and pursuing subsequent relief following the default are contract breaches. Debtor's claim for breach of contract must be dismissed.

Count IV of the Complaint seeks to hold Lender liable for alleged violations of 11 U.S.C. §§ 543 and 362. This effort to hold Lender legally and financially accountable for the alleged violation of these Bankruptcy Code sections by the Receiver is plainly erroneous and fails to state a claim upon which relief can be granted. This Count fails to state a claim because 11 U.S.C § 543(b) does not provide a private right of action, Lender properly pursued relief under 11 U.S.C §§ 543(d) and 362(d), and Lender was never a custodian or receiver nor was the Receiver acting as Lender's agent.

Count V of the Complaint asserts that Lender's claim should be equitably subordinated "to all unsecured priority and non-priority claims in this case and/or (ii) transfer of the lien securing its claim to the Debtor's estate to allow the use of property otherwise subject to its lien for the payment of expenses of the estate." This Count fails to state a claim because the allegations in the Complaint do not describe how any particular alleged "inequitable conduct" caused any injury to other creditors, nor can it, because in fact there are no other creditors in this case to have been injured by the Lender's alleged wrongful conduct. The Complaint also fails to allege any unfair

advantage vis-a-vis other creditors in this case (even assuming there were any) that would justify relief to the Debtor under 11 U.S.C. § 510(c).

Count I of the Complaint asks the Court to require an accounting from Lender under Bankruptcy Code §§ 105 and 543(b) and Bankruptcy Rule 6002. This claim also fails to state a claim upon which relief can be granted because there is no claim for an “accounting” recognized under the Bankruptcy Code or Rules.

In support of this Motion, Lender replies upon the argument and citations to authority provided in its Memorandum of Law filed contemporaneously with this Motion and the entire record in this Case.

WHEREFORE, Lender moves the Court for entry of an Order under Rule 12(b)(6) dismissing Counts I (Accounting), II (Breach of Contract), IV (Violation of Bankruptcy Code §§ 543(b) and 362(d)), and Count V (Equitable Subordination) of the Complaint for failure to state claims against Lender, and granting it such other relief as may be proper under the circumstances presented.

Respectfully submitted,

**GORDON REES SCULLY MANSUKHANI, LLP**

By: /s/ D. Wesley Meehan

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*Attorneys for Wilmington Trust, National  
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Holders of CoreVest American Finance 2018-2  
Trust Mortgage Pass-Through Certificates*

Dated: November 13, 2023

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**CERTIFICATE OF SERVICE**

I, D. Wesley Meehan (PA #327704), hereby certify that on this 13th day of November 2023, Secured Creditor Wilmington Trust, National Association, as Trustee for the Benefit of the Holders of CoreVest American Finance 2018-2 Trust Mortgage Pass-Through Certificates' Motion to Dismiss Counts I, II, IV, and V of the Adversary Complaint for Failure to State a Claim and Memorandum of Law in Support of Motion to Dismiss Counts I, II, IV, and V of Adversary Complaint for Failure to State a Claim was served on the following parties by Court-generated ECF notice and/or by email, as indicated below, to the following addresses:

*Chapter 11, Subchapter V Trustee*

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Dated: November 13, 2023

By: /s/ D. Wesley Meehan  
D. Wesley Meehan (PA #327704)  
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